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OFFICE OF PETITIONS

In re Application of :
Konowalchuk et al. : CORRECTED
Application No. 10/021,533 : DECISION ON PETITION
Filed: 6 December, 2001 :
Atty Docket No. 320-000120US :

This is a corrected decision on the petition filed on 19 April, 2006, under 37 CFR 1.137(b),¹ to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)." This is not a final agency decision.

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continuing examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The application became abandoned on 8 May, 2005, for failure to timely respond to the non-final Office action mailed on 7 February, 2005, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained. Notice of Abandonment was mailed on 21 September, 2005.

The petition is dismissed because a proper authorization to charge the petition fee to counsel's deposit account has not been provided. No fee was included with the petition, and, upon further review, it was discovered that the attorney who signed the transmittal form, Tom Hunter, Reg. No. 38,498, is not listed as an authorized user of the deposit account provided on the transmittal form. As such, a proper authorization to charge the deposit account has not been provided, and the petition must be dismissed because the fee has not been paid.

In the absence of the petition fee, which is required by law, the USPTO can only treat the instant petition as a (feeless 1.181) petition to withdraw the holding of abandonment. As petitioner has not asserted any grounds for the withdrawal of the holding of abandonment, the petition must be dismissed.

The PTO will not reach the merits of any petition under 37 CFR 1.137 lacking the requisite petition fee.²

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (571)273-8300
Attn: Office of Petitions

By hand: Customer Service Window
Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

² See Krahn v. Comm'r, 15 USPQ2d 1823, 1825 (E.D. Va. 1990).

Telephone inquiries should be directed to the undersigned at 571-272-3231.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.

A handwritten signature in black ink, appearing to read "D. Wood". The signature is stylized with a large, looped initial "D" and a cursive "Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions